

**PLACER COUNTY SUPERIOR COURT
CIVIL LAW AND MOTION TENTATIVE RULINGS
FRIDAY, JUNE 12, 2020, AT 8:30 A.M.**

These are the tentative rulings for civil law and motion matters set at **8:30 a.m., Friday, June 12, 2020**. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by **4:00 p.m., Thursday, June 11, 2020**. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

Except as otherwise noted, these tentative rulings are issued by **COMMISSIONER GLENN M. HOLLEY** and if oral argument is requested, it will be heard in Department 31, located at 10820 Justice Center Drive, Roseville, California.

PLEASE NOTE: TELEPHONIC APPEARANCE IS REQUIRED FOR ALL CIVIL LAW AND MOTION MATTERS. (Emergency Local Rule 10.28; see also Local Rule 20.8.) More information is available at the court's website: www.placer.courts.ca.gov.

1. M-CV-0019965 Gilman, Kevan H. vs. Sweeney, Mike, et al

The motions to tax costs are continued to July 24, 2020, to be heard by Commissioner Michael A. Jacques. The date, time and department for oral argument on the motions shall be set forth in the tentative ruling posted in connection with the continued hearing date.

2. M-CV-0074733 Shelly, Eric vs. Youman, Greg

The motion to be relieved as counsel for defendant by the Law Offices of Allan R. Frumkin, Inc., is denied without prejudice. The proof of service in the court's file indicates that the motion was served with insufficient notice pursuant to Code of Civil Procedure section 1005(b).

3. S-CV-0026851 California Capital Ins. Co. vs. Hoehn, Cory Michael, et al

The motion to set aside default and default judgment is continued to July 10, 2020, at 8:30 a.m. in Department 3, to be heard by the Honorable Michael W. Jones.

4. **S-CV-0035805 Verdera Community Association vs. Kan, Johnny**

Appearance required on June 12, 2020, at 8:30 a.m. in Department 31.

5. **S-CV-0037581 Sotomayor, Ivette vs. Ford Motor Company**

The motion for attorneys' fees is dropped as no moving papers were filed with the court.

6. **S-CV-0040779 King, Daniel vs. Out of Bounds Speed and Marine LLC, et al**

Defendant Michigan Motorz LLC's motion for summary judgment or, alternatively, summary adjudication was dropped.

7. **S-CV-0041095 Costa, Kevin vs. Stewart Title of Placer**

Defendants move to reopen discovery in this action.

Upon motion of any party, the court may grant leave to reopen discovery even though the discovery cutoff deadline has passed. Code Civ. Proc. § 2024.050(a). Relevant factors that may be considered by the court in ruling on the motion include: (1) the necessity and the reasons for the discovery; (2) the diligence or lack of diligence of the party seeking the discovery or the hearing of a discovery motion, and the reasons that the discovery was not completed or that the discovery motion was not heard earlier; (3) the likelihood that permitting the discovery or hearing the discovery motion will prevent the case from going to trial on the date set, or otherwise interfere with the trial calendar, or result in prejudice to any other party; and (4) the length of time elapsed between the date previously set, and the date presently set, for trial. Code Civ. Proc. § 2024.050(b); *see Pelton-Shepherd Industries, Inc. v. Delta Packaging Products, Inc.* (2008) 165 Cal.App.4th 1568, 1588.

Defendants fail to make a sufficient showing justifying relief. Defendants do not describe any diligence in seeking the requested discovery, and fail to adequately explain why the discovery was not completed earlier. Their motion is based primarily on the fact that the parties were engaged in early settlement efforts, and it appeared the case would settle prior to trial. While defendants note that they only recently learned that plaintiff intended to call his own attorney as a witness at trial, they fail to show that this information could not have been obtained earlier through formal discovery efforts.

Based on the foregoing, defendants' motion to reopen discovery is denied.

8. **S-CV-0041099 Sierra Northwest Properties, LLC vs. Kila Tahoe, LLC, et al**

Motion to Set Aside and Vacate Judgment

Plaintiff and cross-defendant Sierra Northwest Properties, LLC's ("SNP's") motion to set aside and vacate judgment is **continued to June 19, 2020, at 8:30 a.m. in**

Department 31. Defendant and cross-complainant Kila Tahoe, LLC may file a supplemental response to new argument set forth in SNP's reply brief regarding the court's inherent equitable authority to set aside the judgment as void, by no later than June 16, 2020. The supplemental response shall be no more than five pages in length. No further reply is permitted.

Motion to Strike Memorandum of Costs

Plaintiff and cross-defendant Sierra Northwest Properties, LLC's ("SNP's") motion to strike memorandum of costs is **continued to June 19, 2020, at 8:30 a.m. in Department 31** to be heard in conjunction with the motion to set aside and vacate judgment.

9. S-CV-0042129 Michael, Jerry A. vs. FCA US LLC, et al

Plaintiff's motion to compel depositions of defendant Auburn Chrysler Dodge Jeep Ram's person most qualified, and four dealership personnel, is granted.

As a preliminary matter, defendants' opposition was not timely filed or served, as it was filed and served only six court days prior to the original hearing date. Nevertheless, the court considered the opposition in ruling on plaintiff's motion. Defendants incorrectly claim that the subject discovery is irrelevant due to the service of a Code of Civil Procedure section 998 offer to compromise, citing *MacQuiddy v. Mercedes-Benz USA, LLC* (2015) 233 Cal.App.4th 1036. In *MacQuiddy*, the defendant conceded liability in its answer, and also served a 998 offer. The Court of Appeal affirmed the trial court's rulings denying discovery motions for discovery which related to uncontested issues. *Id.* at 1045. With respect to the 998 offer, the appellate court reversed the trial court's rulings, finding the 998 offer to be invalid. Nothing in the *MacQuiddy* case suggests that service of a 998 offer by itself renders pending discovery moot.

Defendants submit insufficient evidence to establish that the deposition notices were not properly served. The declaration of Nejla Nassirian does not support this contention. The declaration does not sufficiently authenticate the attached exhibits, and does not set forth facts stated under penalty of perjury. The statement that "the factual representations made in this opposition are true and accurate to the best of my knowledge" (Nassirian decl., ¶ 4), is insufficient for evidentiary purposes. *See Bowden v. Robinson* (1977) 67 Cal.App.3d 705, 881.

The subject deponents shall appear for their depositions and produce documents as requested, at a date and time coordinated by the parties to take place within the next 30 days, unless the parties mutually agree to a later date. The depositions may take place either at defendants' dealership conference room, or at a location within 10 miles of the dealership, at plaintiff's election. **However, this ruling shall not affect any rights of the deposing party or the deponents under California Rules of Court, Emergency Rule 11.** Plaintiff's request for sanctions is denied as the notice of motion fails to identify the person, party, and/or attorney against whom the sanction is sought. Code Civ. Proc. § 2023.040. Defendants' request for sanctions is also denied.

10. S-CV-0042251 Sheridan, Christopher vs. Farmer's Insurance

Farmers Insurance Exchange's Motion to Compel Responses to Request for Production of Documents

Farmers Insurance Exchange's motion to compel responses to Request for Production of Documents, Set One, is granted. Plaintiff Christopher Sheridan shall serve verified responses without objections to the subject discovery on or before July 2, 2020. Defendants' request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2031.300(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Farmers Insurance Exchange's Motion to Compel Responses to Special Interrogatories

Farmers Insurance Exchange's motion to compel responses to Special Interrogatories, Set One, is granted. Plaintiff Christopher Sheridan shall serve verified responses without objections to the subject discovery on or before July 2, 2020. Defendants' request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2030.290(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Farmers Insurance Exchange's Motion to Compel Responses to Form Interrogatories

Farmers Insurance Exchange's motion to compel responses to Form Interrogatories, Set One, is granted. Plaintiff Christopher Sheridan shall serve verified responses without objections to the subject discovery on or before July 2, 2020. Defendants' request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2030.290(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Farmers Insurance Exchange's Motion to Have Matters Deemed Admitted

Farmers Insurance Exchange's motion to have matters deemed admitted is granted. Farmers Insurance Exchange's Request for Admissions, Set One, are deemed admitted by plaintiff Christopher Sheridan. Farmers Insurance Exchange is awarded sanctions in the amount of \$450 from plaintiff Christopher Sheridan. Code Civ. Proc. § 2033.280(c).

Mid-Century Insurance Company's Motion to Compel Responses to Request for Production of Documents

Mid-Century Insurance Company's motion to compel responses to Request for Production of Documents, Set One, is granted. Plaintiff Christopher Sheridan shall serve verified responses without objections to the subject discovery on or before July 2, 2020. Defendants' request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2031.300(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Mid-Century Insurance Company's Motion to Compel Responses to Special Interrogatories

Mid-Century Insurance Company's motion to compel responses to Special Interrogatories, Set One, is granted. Plaintiff Christopher Sheridan shall serve verified responses without objections to the subject discovery on or before July 2, 2020. Defendants' request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2030.290(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Mid-Century Insurance Company's Motion to Compel Responses to Form Interrogatories

Mid-Century Insurance Company's motion to compel responses to Form Interrogatories, Set One, is granted. Plaintiff Christopher Sheridan shall serve verified responses without objections to the subject discovery on or before July 2, 2020. Defendants' request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2030.290(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Mid-Century Insurance Company's Motion to Have Matters Deemed Admitted

Mid-Century Insurance Company's motion to have matters deemed admitted is granted. Mid-Century Insurance Company's Request for Admissions, Set One, are deemed admitted by plaintiff Christopher Sheridan. Mid-Century Insurance Company is awarded sanctions in the amount of \$450 from plaintiff Christopher Sheridan. Code Civ. Proc. § 2033.280(c).

11. **S-CV-0042799 Wright, Shirley, et al vs. Likely Land & Livestock Co., Inc.**

Motion to Disqualify Counsel

Plaintiffs' motion to disqualify Tom Gifford as counsel of record for defendants is denied.

The power of the court to order the disqualification of counsel is statutory. "Code of Civil Procedure section 128, subdivision (a)(5) gives courts the power to order a lawyer's disqualification." *DCH Health Services Corp. v. Waite* (2002) 95 Cal.App.4th 829, 831-832. A disqualification motion addresses a conflict between a party's right to choose its counsel and the overall needs of the judicial system to maintain ethical standards of professional responsibility for attorneys. *Comden v. Superior Court* (1978) 20 Cal.3d 906, 915; *People ex rel. Dept. of Corrections v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135, 1145 (*Speedee Oil*). "The paramount concern must be to preserve public trust in the scrupulous administration of justice and integrity of the bar. The important right to counsel of one's choice must yield to ethical considerations that affect the fundamental principles of our judicial process." *Speedee Oil, supra*, 20 Cal.4th at 1145.

Plaintiffs move to disqualify first on the grounds that Mr. Gifford represents seven named defendants in this action. "An attorney's duty of loyalty to a client is not one that is capable of being divided..." *Flatt v. Superior Court* (1994) 9 Cal.4th 275, 282. In this case, plaintiffs fail to establish standing to disqualify defense counsel. "A 'standing' requirement is implicit in disqualification motions." *Great Lakes Construction, Inc. v. Burman* (2010) 186 Cal.App.4th 1347, 1356. The general rule is that a complaining party seeking disqualification of counsel must have or have had an attorney-client relationship with the attorney. *Strasbourger Pearson Tulcin Wolff Inc. v. Wiz Technology, Inc.* (1999) 69 Cal.App.4th 1399, 1404. However, "where the ethical breach is "manifest and glaring" and so 'infects the litigation in which disqualification is sought that it impacts the moving party's interest in a just and lawful determination of [his or] her claims [citation], a nonclient might meet the standing requirements". *Great Lakes Construction, Inc. v. Burman, supra*, 186 Cal.App.4th at 1355.

The appearance of impropriety alone will not support disqualification; there must be a tangible dereliction. *Hetos Inv. Ltd. v. Kurtin* (2003) 110 Cal.App.4th 36, 49. Here, there has been no tangible dereliction, and plaintiffs fail to demonstrate cognizable injury if Mr. Gifford is not disqualified. *See Kennedy v. Eldridge* (2011) 201 Cal.App.4th 1197, 1205. Rather, plaintiffs pose a future hypothetical injury based on potential unproven defenses of the various defendants which plaintiffs suggest might be viable. "[T]he court should start with the presumption that, unless proven otherwise, lawyers will behave in an ethical manner." *DCH Health Svcs. Corp. v. Waite* (2002) 95 Cal.App.4th 829, 834. Plaintiffs cite to *Hernandez v. Paicius* (2003) 109 Cal.App.4th 452 in support of their motion, but fail to show that the facts of this case are in any way similar to the fact pattern in *Hernandez*.

Plaintiffs alternatively move to disqualify Mr. Gifford on the grounds that he is a material witness and/or potential defendant in this action. Plaintiffs cite testimony by defendant Myles Flournoy, who stated in his deposition that he sought legal advice from Mr. Gifford with respect to his dealings with plaintiff Shirley Wright, which dealings form the basis for some of plaintiffs' claims in this action.

Plaintiffs fail to establish grounds for disqualification. An attorney or law firm is not subject to disqualification merely because it previously provided legal advice to its clients on matters that form the basis of the litigation. *See Hetos Investments, Ltd. v. Kurtin* (2003) 110 Cal.App.4th 36, 52 (law firm alleged to have prepared promissory note which violated California law not disqualified from representing client in action on the note). Plaintiffs contend that they would call Mr. Gifford as a witness at trial, but it is unclear how testimony related to legal advice provided by Mr. Gifford to a client would not be protected by the attorney-client privilege. Further, although plaintiffs suggest that Mr. Gifford could be added to the verdict form as a defendant, they do not articulate the basis of any claims against Mr. Gifford, and thus far have taken no steps to amend the complaint to add Mr. Gifford as a defendant.

For the foregoing reasons, plaintiffs' motion to disqualify is denied.

Motion for Summary Judgment or, in the Alternative, Summary Adjudication

Placer Title Company's motion for summary judgment or, in the alternative, summary adjudication, is dropped in light of the notice of partial settlement filed March 19, 2020.

12. S-CV-0042819 Farinha, Barbara vs. Williams-Sonoma Stores, Inc.

This tentative ruling is issued by the Honorable Michael W. Jones. If oral argument is requested, it shall be heard on June 12, 2020, at 8:30 .m. in Department 3, located at the Historic Courthouse in Auburn.

Motion for Preliminary Approval of Class Action Settlement

Ruling on Objections

Plaintiff's objections to evidence are ruled on as follows: Objection Nos. 4, 8, 9, 11 and 12 are sustained. The remaining objections are overruled.

Ruling on Motion

Plaintiff Barbara Farinha moves for preliminary approval of class action settlement. The court has broad discretion in determining whether (1) a settlement is fair and reasonable, (2) the class notice is adequate, and (3) certification of the class is proper. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal.App.4th 224, 234-235.

“[The] preliminary determination establishes an initial presumption of fairness...” *In re General Motors Corp.* (3d Cir. 1995) 55 F.3d 768, 784. “[I]f the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval, then the court should direct that the notice be given to the class members of a formal fairness hearing...” *Schwartz v. Dallas Cowboys Football Club, Ltd.* (E.D. Pa. 2001) 157 F.Supp.2d 561, 570, n.12, quoting Manual for Complex Litigation, Second § 30.44 (1985).

The procedural rules for class certification, notice, settlement and judgment in a class action are set forth in California Rules of Court, rules 3.760-3.771; *see Hernandez v Restoration Hardware, Inc.* (2018) 4 Cal.5th 260, 266. California Rules of Court, rule 3.769(f) contemplates that objections to the settlement will be subject to the procedures set forth in the notice of final approval hearing sent to class members. After members of the class have been properly notified of the action, they must decide whether to remain members of the class, and bound by any judgment, whether to intervene with separate counsel, or whether to opt out of the action and pursue independent remedies. *Villacres v. ABM Industries Inc.* (2011) 189 Cal.App.4th 562, 582.

Olivia Overton (“Overton”) objects to and opposes plaintiff’s motion, arguing that the court has not been given “basic information about the nature and magnitude of the claims in question and the basis for concluding that the consideration being paid for the release of [the] claims represents a reasonable compromise.” *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129. Overton’s objection and opposition is procedurally improper at this juncture. Notice has not been sent to the class members, and Overton has not declared whether she intends to opt out of the settlement and pursue independent remedies, or remain a class member and exercise her right to object.

When reviewing the fairness of a class action settlement, the court is to give due regard to the parties’ agreement, ensuring the agreement is not a product of fraud, overreaching parties, or collusion and that the settlement, as a whole, is fair, reasonable, and adequate. *In re Cellphone Fee Termination Cases* (2010) 186 Cal.App.4th 1380, 1389; *Dunk v. Ford Motor Co.* (1996) 48 Cal.App.4th 1794, 1801; *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000) 85 Cal.App.4th 1135, 1145. Reasonableness of the settlement may be determined by looking to several factors such as the strength of the plaintiff’s case; the risk, expense, complexity, and duration of further litigation; discovery; the experience of counsel; the presence of government participation; and the reaction of class members to the proposed settlement. *In re Cellphone Fee Termination Cases, supra*; *Dunk, supra*; *Kullar v. Foot Locker Retail, Inc., supra*.

The court has carefully reviewed and considered the stipulation of settlement and release signed by the parties, the moving papers and accompanying declarations filed in connection with the motion, as well as Overton’s objection/opposition. Based upon that review, the court determines that a sufficient showing has been made that the settlement is fair and reasonable. In particular, the court has considered the strengths and

weaknesses of plaintiff's case, the significant risk of failing to certify the class due to defendant's written policies, and the assessment of experienced counsel involved in negotiating the settlement.

The court finds the proposed class notice to be adequate. The court preliminarily certifies the "Settlement Class" as identified in paragraph 1 of the stipulation of settlement and release. The court preliminarily approves the settlement agreement and approves the proposed form of the notice of proposed settlement of class action.

The order to show cause hearing set June 16, 2020, at 11:30 a.m. in Department 40 is vacated. The court sets a Final Approval Hearing on January 15, 2021, at 8:30 a.m. in Department 3.

Plaintiff shall modify the proposed order to adjust the dates for notice to coincide with the Final Approval Hearing date, and to state the correct judicial officer and department for the hearing.

13. S-CV-0043163 Cal. State Grange vs. The Meadow Vista Community Guild

Motion to Compel Responses

Plaintiff's motion to compel responses to form interrogatories, special interrogatories, and request for production of documents, is granted. Defendant shall serve verified responses without objections to plaintiff's Form Interrogatories, Set One, Special Interrogatories, Set One, and Request for Production of Documents, Set One, on or before July 2, 2020. Plaintiff's request for sanctions is denied as the motion was unopposed. Code Civ. Proc. § 2031.300(c). However, repeated conduct of failing to comply with discovery obligations may lead the court to find an abuse of the discovery process, and award sanctions on that basis. *Laguna Auto Body v. Farmers Ins. Exchange* (1991) 231 Cal.App.3d 481, overruled on other grounds in *Garcia v. McCutchen* (1997) 16 Cal.4th 469, 478, fn. 4.

Motion to Have Matters Deemed Admitted

Plaintiff's motion to have matters deemed admitted is granted. The matters set forth in plaintiff's Request for Admissions, Set One, are deemed admitted by defendant The Meadow Vista Community Guild. Plaintiff is awarded sanctions in the amount of \$510 from defendant The Meadow Vista Community Guild and its counsel, jointly and severally.

14. S-CV-0043217 Campoy, Jill, et al vs. Hintz, Brandon, et al

Plaintiffs' motion to compel attendance of Brandon Hintz at his oral deposition is granted. Defendant Brandon Hintz shall appear for deposition at the time and date chosen by plaintiffs. **This ruling shall not affect any rights of the deposing party or the deponent under California Rules of Court, Emergency Rule 11.** Plaintiffs' request for sanctions

is denied as the notice of motion does not set forth a request for sanctions, or identify the person, party and/or attorney against whom sanctions are sought.

15. S-CV-0044667 Hase, Scott vs. Ford Motor Company

The demurrer to complaint was dropped by the moving party.
